THE FRENCH CONSTITUTION

By

HENRY MORRISON

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THE FRENCH CONSTITUTION

The French Constitution

By Henry Morrison

With Preface by

H. E.

The French Ambassador

(M. de Fleuriau)

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AUTHOR'S NOTE

In preparing this student's guide to the French Constitution, I have tried to bring out as clearly, and to describe as concisely, as possible the origin or functions of the essential features of the French Government. In the treatment of this rather involved study I have made frequent reference to many well-known authorities. For historical facts I am indebted to M. Esmein's "Éléments de droit constitutionnel", and for facts relating to the sources of French Constitutional Law I have made use of M. Duguit's "Traité élémentaire de droit constitutionnel". I have made frequent and useful reference to M. Eugène Pierre's "Traité de droit politique electoral et parlementaire" and to M. Charles Menoist's "La reforme parlementaire", and to M. Joseph Barthélemy's "Les résistances du Sénat" for my two chapters describing the French Chamber of Deputies and Senate. For the description of the French Administrative System valuable information was obtained from M. Henri Chardon's "Les travaux publics". For student's reference no better authority on French Justice could be found than M. Joseph Barthélemy's "La mise en accusation devant le Sénat du Président de la République et des ministres", 1919. In my examination of the French Financial System and Public Rights in France I am indebted to M. Stourm's "Le Budget" and to M. Joseph Barthélemy's "Les

rapports de l'état français et de l'église catholique depuis la separation". The whole subject of the French Constitution is covered by the latter's "Le Gouvernement de la France".[1] No student who would obtain a clear and comprehensive knowledge of this complicated subject should fail to read this admirable work.

H. M.

November 25, 1929

[1] English Translation by J. B. Morris (George Allen & Unwin).

PREFACE

Le livre de M. Morrison explique au public anglais, aussi brièvement que possible, comment la France est actuellement gouvernée et administrée. C'est avec intention que je dis qu'il explique, parceque l'auteur ne se contente pas de résumer des lois et des règlements et qu'il expose comment, en fait, les institutions françaises fonctionnent. Je le félicite d'avoir adopté ce système.

On risquerait en effet de se faire une idée fausse du mécanisme du Gouvernement français si l'on s'en tenait à la seule lecture des textes législatifs, qui ont été, avec le temps, complétés ou amendés par l'usage et la tradition.

M. Morrison fait justement remarquer que la Constitution de la République a été élaborée et votée par une Assemblée qui ne désirait pas un régime républicain. Aussi cette constitution est-elle tout-à-fait insuffisante. Elle prévoit l'existence d'un Président du Conseil des Ministres, mais elle ne définit ni son rôle, ni ses pouvoirs; la pratique parlementaire, aidée d'ailleurs par les souvenirs de régimes passés, a rapidement rempli cette lacune.

Dans cette mise au point de la constitution, le Parlement, ou plus exactement la Chambre des Députés, a joué le principal rôle. Les autres organes constitutionnels ne pouvaient leur faire concurrence: le Président de la

République, parceque, après le Coup d'État du Maréchal de MacMahon, toute initiative de sa part soulevait les méfiances des Assemblées et que les Cabinets successifs étaient constamment absorbés par leur tâche immédiate. La Chambre des Députés en a profité pour grandir son rôle conformément à la tendance instinctive de tous les corps constitués. C'est ainsi qu'elle s'est arrogé le droit de déposer des Présidents de la République en renversant les Ministères formés par eux, conséquence imprévue de la suppression du droit de dissolution primitivement conféré au Chef de l'État.

Le Parlement français cependant se montre parfois très prudent en matière de lois touchant à la constitution et en particulier à sa propre constitution. Les Colonies françaises, par exemple, sont bien représentées dans son sein par des députés ou des sénateurs; mais ce ne sont que les Colonies de date relativement ancienne: En Asie, les établissements des Indes et la Cochinchine; en Afrique, le Sénégal et la Réunion, sans que même avantage soit accordé aux immenses territoires du Cambodge, du Siam, du Tonkin, du Soudan, de la Casamance, de la Côte d'Ivoire, du Dahomey, de Madagascar. En quelques cas, les Français ne suivent pas les règles de la logique.

Dans l'exposé de M. Morrison, la partie relative à l'administration locale me paraît de nature à intéresser les

Anglais en raison de l'énorme différence entre les systèmes français et britannique. À cet exposé, je ferai toutefois une critique : le préfet d'un department français n'est pas seulement un agent politique ; il était essentiellement dans l'esprit de Napoléon I^er^ et il est resté l'administrateur de son département, celui qui prépare le budget annuel, le discute au Conseil Général et ensuite le met à exécution. Je pourrai faire quelques autres critiques, mais, dans l'ensemble, le livre de M. Morrison donne une idée exacte de ce que sont le Gouvernement et l'administration de la France.

A. DE FLEURIAU

AMBASSADE DE FRANCE À LONDRES
Décembre 8, 1929

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THE FRENCH CONSTITUTION

CHAPTER I

THE CONSTITUTION

THE Constitution now in force in France is a document which determines the existence and functions of the Government (the President of the Republic, the Ministers, the Parliament).

It consists of five laws separately voted in 1875. Three of these laws are strictly constitutional, and the other two (dealing with elections of Senators and Deputies) are organic—that is, changeable by ordinary legislation.

ITS ORIGIN

After the disaster of Sedan and the capture of Napoleon III (1870), the Imperial régime in France collapsed.

A provisional Government—"Gouvernement de la Défence nationale"—was set up. It was composed of Deputies of Paris. This *de facto* Government caused the election of an Assembly to discuss terms of peace and provide the country with regular institutions. This was "L'Assemblée Nationale", 1870–5. In this Assembly there was a majority in favour of the restoration of a Monarchy. There were three candidates for the Throne:

1. The Prince Imperial, son of Napoleon III.
2. Count Chambord, grandson of Charles X (Bourbon Line).

3. The Count of Paris, grandson of Louis Philippe (Orléans Line).

However, no decision could be reached about the succession; so the National Assembly resolved to establish a Republic, which was to have a Monarchical tendency.

The "Wallon" amendment, determining the procedure of elections of the President of the Republic, was carried by one vote only.

As we have seen, the Royalists could not at the time establish a Monarchy; so they accepted a Republic until they could settle the question of succession.

On the other hand, the Republicans considered a Republic on Monarchical lines better than no Republic at all; so they accepted it, fully intending to change it later. It is clear, therefore, that both sides regarded this form of Government as purely provisional.

General Characteristics

1. *Brevity.*

Members of the National Assembly had no real interest in their work, as they thought it would be a temporary Constitution.

Moreover, it was possible to make a wide appeal to precedent, established by the former political experience of France.

Therefore, the text of the Constitution, containing only twenty-six articles, is extremely short.

2. *Lack of Method.*

The above reason also explains the lack of method in the construction of the text of the Constitution.

3. *No Dogmatism.*

As opposed to the former Revolutionary Constitutions, that of 1875 embodied no ideal and proclaimed no principle. In fact, the Republican form of Government was indirectly and even timidly introduced.

4. *No Spirit of Simplification or Abstract Logic.*

The National Assembly mistrusted the old and popular theory that the nation, being one, could be governed by one Assembly only; side by side with the popular Chamber it created the Senate, a valuable deliberative and legislative assembly, exercising a moderating and stabilizing influence.

5. *A Compromise.*

The Constitution of 1875 was a great compromise between Republican and Monarchical principles. Some of the features of this compromise are:

(*a*) Irresponsibility of the President of the Republic.
(*b*) Political responsibility of Ministers towards the Chambers.
(*c*) The President's right of dissolution.
(*d*) Regulation of parliamentary sessions.
(*e*) Division of power between the President and the Parliament for making treaties, etc.
(*f*) Way of modifying the Constitution by revision, etc.

To conclude the description of the characteristics of the Constitution of 1875, it should be noted that in the course of time the Constitution has become much less Monarchical in character. The most striking example of this is the

decreasing importance of the President of the Republic and the increasing importance of the Chamber of Deputies.

Revision of the Constitution

It should be remembered that both by Monarchists and Republicans the Constitution was regarded as provisional; therefore it should be easily modified.

There are two opposing traditions regarding the nature of a Constitution:

(*a*) The Revolutionary principle—
of a rigid Constitution, difficult to change.
(*b*) The Monarchical principle—
of a pliable Constitution, easily changed.

Here the National Assembly adopted a compromise. It decided, as a concession to the Monarchical principle, that purely constitutional provisions could be modified by the ordinary Chambers, *but*—as a concession to the Republican principle, this modification should be done by a special procedure called "Revision".

This procedure is in two stages:

(*a*) The vote for Revision ("Le vœu de Revision"). Each Chamber declares the necessity of a revision by separate and independent motions; the subject of revision must be specified. As soon as the "vœu de Revision" has been expressed by both Chambers, they automatically form "L'Assemblée Nationale"—consisting of Deputies and Senators in one body.

This Assembly's committee is that of the Senate.
Its meetings are held at Versailles.
This Assembly proceeds to

(*b*) The Revision itself ("Revision proprement dite").

The principle of Limited Revision ("Revision limitée") confines the deliberations of the National Assembly to subjects specified in the "vœu de Revision". This is adhered to for the safety of the Senators, who are only about three hundred strong as opposed to some six hundred Deputies.

The electorate is not consulted about the necessity of Revising the Constitution.

Although this procedure is marked by great solemnity, it is really simpler than the passing of an ordinary law by the Parliament, as all deliberations are conducted by a single Assembly.

Former Revisions.

(1) 1879		The seat of Public Executive Authority was transferred from Versailles to Paris.	These changes tended to democratize the Senate
(2) 1884	(*a*)	Abolition of life members of the Senate	
	(*b*)	Extension of the Senatorial electorate	

(*c*) Removal of the provisional character of the Constitution by the addition to its text of the clause, "The Republican form of Government cannot be the object of Revision."

(3) 1926. Modification of fundamental financial laws.

Lack of Sanction.

There is no special authority or sanction compelling the Chambers to respect the Constitution. If the Parliament passes an ordinary law contrary in its spirit to the fundamental principles of the Constitution, that law would still be legally binding on the nation. Public opinion, therefore, demands the establishment of such an authority. Some suggest vesting that authority in the Court of Cassation (cf. the Supreme Court of U.S.A.).

CHAPTER II

THE PRINCIPLE OF DEMOCRACY

THE French Government is democratic in form. Universal Suffrage is the sole source of power ("Le Suffrage universel source unique du pouvoir").

The French people choose among themselves a certain number, who govern, legislate, and administrate in the name of the people.

French democracy is purely representative.

In accordance with the French Constitution there is only one electorate: members of local councils are chosen by the same men who elect the Deputies of the Chamber.

THE RIGHT TO VOTE

1. "*Universalité.*"

The vote is universal. This means that for the right to vote there are no special qualifications of birth, wealth, education, etc.

This principle is the only one mentioned in the Constitution of 1875.

The following points, relating to suffrage and election procedure, are not strictly constitutional and can be changed by ordinary legislation.

2. "*Dévouement à l'État.*"

Loyalty to the State is required in every elector. French nationality by birth or naturalization gives the right to vote.

3. "*Masculinité.*"

Men alone enjoy the right to vote.

4. "*Maturité d'esprit.*"

Voters must be twenty-one or over. Twenty-one to twenty-four years of age is a Frenchman's period of compulsory military service, during which his voting right is suspended. Therefore it is suggested to advance the voting age to twenty-four.

5. "*Aptitude intellectuelle.*"

A certain standard of intelligence is required.

(*a*) "Les interdits."—Persons who, on the petition of their relatives and by the decision of the Civil Tribunal, are deprived of the right to manage their "patrimoine"—inherited property—on the grounds that they are incapable of doing so, permanently lose their right to vote.
If not proclaimed "Interdit", a madman would retain his right to vote.

(*b*) The right to vote is suspended for the period of confinement in a mental home or asylum.

6. "*Aptitude morale.*"

A certain standard of conduct is required. The following are deprived of the right to vote, either in perpetuity or for a term of years:

(*a*) Anyone who has served a criminal or correctional sentence.

(*b*) Civil servants dismissed for gross incompetence.

(*c*) Bankrupts lose voting right for three years.

The Vote

Every man who enjoys voting rights must be registered on the Electoral List ("La Liste Electorale"). Each "commune" has a list of those who—

(*a*) Reside permanently;
(*b*) Reside for a period not less than six months;
(*c*) Are ratepayers in that "commune".

Note the following facts about "La Liste Electorale":

(1) "*Unité de Liste.*"

Since 1884 there has been but one single electoral List—the same for political and municipal elections.

(2) "*Permanence.*"

This List has a continuous existence; thus there is no confusion through having to draw up a new one at each election.

(3) "*Revision de la Liste.*"

(*a*) Every year (from January 1st to March 31st) the List is revised by a special body:

"Commission administrative", composed of
The Mayor,
One delegate of the Prefect,
One delegate of the Municipal Council.

All appeals against the decision of this committee are made to—

(*b*) "Commission Municipale", consisting of
The former plus two delegates from the Municipal Council.

Further appeals go to—

(*c*) The Justice of the Peace ("Juge de Paix), whose legal decisions are controlled by

(*d*) The Court of Cassation.

All these procedures are easy and free of charge.

N.B.—(1) The mayor issues special cards to prove an elector's identity.

(2) Soldiers cannot vote during their military service on account of the supposed incompatibility of military discipline and political interests.

PROCEDURE OF THE BALLOT ("SCRUTIN")

1. The vote is *direct*.
   Representatives are directly chosen by electors.
2. The vote is *optional* ("facultatif").
   Electors need not vote if they do not want to.
3. The vote is made *easy* ("facilité").
   There is at least one polling-station in each commune.
   Polling takes place on Sundays from 8 a.m. till 6 p.m.
4. The vote is *personal* ("personnel").
   It must be done personally.
   There is a movement on foot to introduce voting by post to reduce the number of abstentionists.
5. The vote is *secret*.
   Voting-slips without personal marks, and envelopes, are used;
   Votes are recorded in a separate compartment.

6. The vote is *fair*.

Voting-slips are received by a trustworthy committee.

(*a*) As a rule the committee is composed of the mayor and four senior municipal councillors. In elections to the Chamber of Deputies votes are counted by a committee called "Commission de Recensement" (four senior general counsellors presided over by the president of the local Tribunal). The actual counting by the tellers is done in public.

(*b*) In Municipal elections the mayor is assisted by the two youngest and the two oldest voters who happen to be in the room when the ballot opens.

(*c*) In Senatorial elections the committee is as above, but it is presided over by the president of the local Civil Tribunal.

N.B.—To ensure fairness of elections a law was passed in 1914 regulating the number of election posters.

THE BALLOT ITSELF.

1. As a rule elections are decided by a majority vote.
2. There is always an election—even if there are no more candidates than seats.
3. If at the first poll no candidate obtains the necessary "absolute majority", which is half of the total number of votes polled plus one (the law demands that this majority be not less than one-quarter of the number of electors inscribed on the Electoral List),

a second poll, called "Ballotage", takes place. In this second poll a "relative majority", called "pluralité", is sufficient. This rule is applied in:

(*a*) Elections to the Chamber of Deputies, local administration councils (general councils, councils of "arrondissement", municipal councils), and to presidents of elected assemblies, while

(*b*) In Senatorial and Mayoral elections absolute majority is necessary at the first two polls.

(*c*) The President of the Republic must be elected by an absolute majority.

Judicial Control of Elections ("Jugement des Elections")

Common jurisdiction does not exercise control over elections.

(*a*) It is the "Conseil de Préfecture" with appeal to the "Conseil d'État" which deals with all cases arising from elections to municipal councils and councils of "arrondissement."

(*b*) It is the "Conseil d'État" in the first and last instance which deals with elections to "Conseils Générals".

(*c*) Parliamentary elections are subject to a special régime of verification of powers ("vérification des pouvoirs"): each newly elected Chamber judges the elections of its members. M. Barthélemy criticizes this system and suggests the Court of Cassation as the proper body to deal with such cases.

CHAPTER III

THE PARLIAMENT

THE French Parliament consists of two Chambers: "La Chambre des Députés"—which sits at the Palais Bourbon —and "Le Sénat"—at the Palais du Luxembourg.

The will of the Parliament is expressed when the decisions of the Chambers coincide. The two Chambers meet as one Assembly at Versailles:

(*a*) As "Assemblée Nationale"—for the Revision of the Constitution;
(*b*) As "Le Congrès"—for the Presidential Election.

N.B.—The Senate in special cases acts as a High Court of Justice for political cases.

ENROLMENT AND STATUS OF MEMBERS OF PARLIAMENT

I

The Constitution takes no serious precaution to ensure the competence of candidates.

1. The age required is:

   Over twenty-five for the Chamber of Deputies,
   Over forty for the Senate.

2. A candidate must enjoy electoral rights.
3. No special guarantee of intellect is required.
4. Proof of patriotism is required: naturalized aliens can vote, but are ineligible for election to Parliament until ten years after naturalization.

5. A certain standard of morality is required: Discharged bankrupts, though retaining the right to vote after three years, can never become eligible for candidature without official restoration.
6. Members of families that had reigned in France are ineligible.
7. Men on military service are ineligible.
8. To avoid the exercise of unlawful influence on electors—
   (*a*) Officials are ineligible;
   (*b*) But only those who could exercise such influence (i.e. Prefects);
   (*c*) Only in those districts where that influence can be exercised;
   (*d*) Only during the time at which that influence can be exercised, which the law puts at six months after expiration of their office.

II

The following precautions are taken to safeguard the independence of Members of Parliament.

1. Members of Parliament receive a salary (27,000 francs per annum) from the public funds, thus making the position of Members of Parliament tenable by men of all means. Moreover, they derive additional benefits from their position, such as a practically free pass on all railways.
2. In order to safeguard the independence of Members of Parliament from Governmental pressure

a Government office and a seat in the Parliament have been declared incompatible; but since 1919 a State official elected to Parliament is considered to be on long leave from his office. On the other hand, if a Member of Parliament is offered a Government office, he has to retire from Parliament (subject to his appealing for re-election to his constituency), unless his appointment is only temporary (for the period of six months; this temporary appointment may be renewed).

3. In order to protect Members of Parliament against malicious prosecution by political enemies, they are proclaimed independent of the law.

   (*a*) "Irresponsabilité judiciaire."

   To enable a Member of Parliament to speak without fear, he cannot be attacked in the criminal or civil courts, either by the Government or by individuals, for acts committed in the *exercise of his office*.

   (*b*) "Inviolabilité."

   A Member of Parliament during session cannot be sued for criminal offences, although committed *apart from his office*, without the consent of his Chamber.

III

Universal suffrage has had no detrimental effect on Parliament. The introduction of Labour members has effected an outward change as compared with the former Chambers. The style of eloquence has changed, but the

sum of talents has remained. Democracy has increased the advantages of a political career. Seats in Parliament have an increasing attraction for the lower middle classes. However, Democracy makes no mistake in filling its assemblies with intellectuals. The professions from which Members of Parliament are chiefly drawn are Journalism, Law, Medicine. "One of the best proofs of the French peasant's common sense is that he does not want a peasant to represent him."

IV

The French Parliament is divided into about a dozen political groups. The names of these groups are confusing. The Chamber of Deputies and the Senate, according to Art. XII of the "Règlement" (see later), are divided (as in the Parliament of 1925) into ten groups:

1. "L'Union Républicaine Démocratique."
2. "Democrates."
3. "Les Républicains de Gauche."
4. "La Gauche Républicaine Démocratique."
5. "La Gauche Radicale."
6. "Le Groupe Radicale Socialiste."
7. "Les Républicains Socialistes."
8. "Le Groupe du Parti Socialiste."
9. "Le Groupe Communiste."
10. "La Réunion des Députés qui n'appartiennent à aucun Groupe.

None of these groups has a working majority. Thus a Coalition was formed known as "Le Cartel", and which consists of Nos. 6 and 8, to which are joined 5 and 7,

thus forming a majority, weakly opposed by the extreme Right and Left.

N.B.—No. 8, the Socialist Party, forbade their members to accept office in the Government.

This explains why there is no effective Opposition in the French Parliament. Therefore:

1. The President of the Republic has great liberty in his choice of Ministers.
2. Cabinets are unstable, not knowing where to look for support.
3. There are numerous Ministries, but they are generally composed of former Ministers in new offices.

The Working of Parliament

I

1. *Ordinary Sessions.*

Every year, on the second Tuesday in January, the Chambers assemble at the summons of their respective Presidents for an ordinary session.

(*a*) The Government can close the session five months after the Parliament has met.
(*b*) Not more than twice during each session the Government may suspend Parliament for a period of not more than one month each time.

N.B.—Adjournment does not shorten the effective duration of the session.

2. *Extraordinary Session.*

(*a*) The Government can summon Parliament to this session, the duration of which rests with the Government.

(*b*) The President is bound to summon Parliament for an extraordinary session, if required by an absolute majority of its members.

N.B.—These extraordinary sessions have become quite ordinary: as the Budget is seldom completed during the session, the Government is compelled to call Parliament for an extraordinary session every year, about October.

II

Each Chamber annually elects its committee, comprising a president and other officials. The former is a very important person in the State and should be impartial.

III

Each Chamber makes its own regulations ("Règlement"). This is a document of capital importance (e.g. it includes everything concerning interpellation. To some extent it is responsible for the legislative efficiency of the Parliament. It also fixes:

1. *The Method of Voting in Parliament.*

(*a*) By show of hands;

(*b*) By ballot, for questions of importance or on the demand of twenty members; ushers pass round a box in which voting-slips are collected.

N.B.—In that case vote by proxy often takes place; those who habitually vote for absentees are called "boitiers".

(*c*) A public ballot may be held on the signed demand of the greater number of members; it necessitates the personal presentation of voting-slips at the Tribune.

2. *Committees* ("*Commissions*").

Any question before being submitted to the Chambers is studied by a committee.

Methods of appointing committees are:

(*a*) By "bureaux."
Members are divided by lot into groups called "bureaux"—11 for the Chamber, 9 for the Senate. Each "bureau" appoints the necessary number of committee men.

(*b*) By proportional representation; each political group appoints committee men in proportion to the number of its members.

N.B.—A "rapporteur" draws up a report of the findings of his committee.

3. *Penalties*.

To check turbulent scenes in Parliament, which sometimes occur, the regulation draws up a scale of penalties. They are:

(*a*) "Le Rappel à l'ordre" (The call to order).
(*b*) The same—officially recorded.
(*c*) "La Censure simple", entailing the loss of one-half the member's salary for one month.

(*d*) Censure with temporary expulsion (for fifteen sittings), plus loss of one-half salary for two months.

(*a*) and (*b*) are pronounced by the President of the Chamber.

(*c*) and (*d*) are pronounced by the Chamber itself.

N.B.—Any Deputy ignoring his penalty may suffer suspension for forty sittings, or three days' imprisonment. The same penalties exist for the Senate as well, but they are never used.

CHAPTER IV

THE CHAMBER OF DEPUTIES

THIS Assembly plays the most important part in the French political system. It corresponds to the House of Commons in England.

1. *Eligibility.*

In addition to ordinary electoral rights candidates for election to the Chamber of Deputies must:

(1) Be twenty-five years of age or over;
(2) Declare their candidature at the local "Préfecture" five days before the election day either (*a*) personally, or (*b*) through an agent, or (*c*) by a registered letter.

N.B.—To prevent multiple candidatures ("candidatures multiples") the above declaration must be made in one constituency only. This rule was introduced after Général Boulanger's attempted "coup d'état" in 1889. Standing for election in many constituencies, he hoped in that way to ensure the success of his enterprise.

2. *Number of Deputies.*

In 1919 a law was passed that one Deputy should represent every 70,000 French citizens of a department. This fixes the number of Deputies at 584.

3. *Systems of the Election of Deputies.*

There are two systems, which were alternately adopted since 1875:

(*a*) "Scrutin uninominal"—Single-vote system: a small constituency — an "arrondissement"—returns one Deputy only.

(*b*) "Scrutin de Liste"—multiple-vote system: every elector votes for a list of Deputies, composed of as many names as there are seats in the Chamber allotted to that constituency, which in this case is a department.

Both systems are criticized.

Those who oppose the first system argue that in this case there is a great opening for corruption; that the Deputy is forced by his electors to follow petty local interests instead of national interests; that the Deputy is easily intimidated by the Government, etc.

The criticism of the second system is that the Chamber is liable to split into two opposed blocks, each of them composed of different political parties—the Right and the Left wing. Thus, when one of them gains a victory, there is a drastic change of policy, upsetting the balance of the State. This antithesis between the two extremes does not accord with the spirit which has guided French politics since 1870. The average Frenchman is very conservative, but he remembers that his status is due to the Revolution. This makes the centre of gravity of French politics steady, and accounts for the shortness of the periods of existence of the "Scrutin de Liste" system.

The two systems were introduced alternately on the following dates:

1875 "Scrutin uninominal."
1885 "Scrutin de Liste."

1889 "Scrutin uninominal."
1919 "Scrutin de Liste"(according to a special system of proportional representation).
1927 "Scrutin uninominal."

The elections of 1919 and 1924 were held under a system which was a compromise between the principles of Absolute Majority and Proportional Representation. By this system a list which obtained an absolute majority gained all the seats. If only some of the candidates on a list obtained an absolute majority, they gained their seats. The remaining seats were distributed among other lists; in the first place seats were allotted to lists which had obtained the largest "quotient"—the number of votes polled divided by the number of seats available; in the second place—the remaining seats were allotted to lists which had obtained the largest average of votes ("la plus forte moyenne").

In 1927 a law was passed according to which the 1928 elections were conducted on the principle of "Scrutin uninominal" with the "arrondissement" as constituency.

4. *Period for which a Deputy is elected.*

Deputies are elected for four years. This law is not constitutional and can be modified by ordinary legislation.

5. *Re-eligibility.*

Every Deputy can be re-elected an indefinite number of times.

6. *Complete Renewal* ("*Renouvellement intégral*").

All Deputies come to the end of their term of office on the same day. In practice many old Deputies are re-elected

to the new Chamber. This fact refutes the argument of critics who maintain that an entirely new Chamber will be without political experience.

N.B.—The alternative system is called partial renewal ("Renouvellement partiel"). This system operates in the Senate, General Councils of Departments, and Councils of "Arrondissements".

CHAPTER V

THE SENATE

THE Senate has been created with the purpose of moderating and stabilizing Parliament. The Senate of the 1875 Constitution was to a certain extent modelled on the Chamber of Peers, the latter being modelled on the English House of Lords. Except for the following special features it plays the same part as the Chamber of Deputies.

1. Financial laws must first be voted by the Chamber of Deputies, the latter enjoying the right of priority in financial matters ("Droit de priorité en matière financière").
2. Whereas the President of the Republic, with the express approval of the Senate, can dissolve the Chamber of Deputies, the Senate itself can be dissolved under no condition.
3. The Senate can be formed into a High Court of Justice for political matters.
4. In an exceptional crisis arising during the Government's holiday and when the Chamber of Deputies is not in session, the Senate is authorized to control the exercise of Executive power.

N.B.—In 3 and 4 only the Senate can exercise its powers outside the session.

NUMBER OF SENATORS AND THE ELECTORAL COLLEGE

By the Constitution of 1875 the number of Senators was fixed at 300. The return of Alsace and Lorraine to France increased their number to 314. They are elected for nine

years by those who themselves were elected by universal suffrage.

Senators are elected in each department by an electoral college presided over by the president of the local Civil Tribunal and consisting of:

(*a*) Deputies of the Chamber from that Department.
(*b*) Members of the General Council of that Department.
(*c*) Members of all Councils of "Arrondissement" of that Department.
(*d*) Delegates representing each Municipal Council of that Department.

Although playing the same legislative part in Parliament as the Chamber of Deputies, the Senate is somewhat forgotten by the public. Whenever one discusses Parliament one usually means the Chamber of Deputies.

I

The Senate and the Political Parties

1. The creation of a Second Chamber, the Senate, was for the Conservative majority of the National Assembly of 1871–5 the essential condition in their temporary acceptance of a Republican régime. The first strictly constitutional law voted by the National Assembly dealt with the organization of the Senate.
2. The principle of a Single Chamber system seems to have been the fundamental doctrine of the Republican Party. However, its leader in the

National Assembly of 1871–5, Gambetta, in the face of the ever-present menace from Germany, persuaded his followers to betray that principle, as he thought, temporarily.

Nowadays the suppression of the Senate is no longer sought for by any political party, as a great many Senators belong to the Radical Party.

II

Methods of Resistance

1. The National Assembly made the Senate a small body, so as to ensure its calmness. It has 314 members.

   N.B.—Senators are in the minority when both Chambers form one Assembly: National Assembly and Congress.

2. Senators are safeguarded from the turbulence of democracy by:
   (*a*) Long duration of their office (nine years).
   (*b*) Partial renewal. Every three years one-third retire. Hence if a newly elected Chamber of Deputies represents the present-day public opinion, that one-third of the Senate which is in its ninth year of office may represent the public opinion of some

   thirteen years ago, if one considers that part of the Senatorial Electoral College, which consists of members of the Municipal

Councils, some of whom might already have been elected for four years or even of *fifteen years ago*, if one considers that part of the Senatorial Electoral College which consists of General Councillors, some of whom might already have been elected for *six* years.

Hence the Senate is a systematically reactionary institution—always several years behind the policy of the country and the Chamber.

3. The standards of eligibility and electorate were also considered by the Constitution so as to make the Senate able to exercise this stabilizing influence.

(*a*) The only special condition of eligibility to the Senate is the age of forty years. Moreover, the Constitution reserved to the Senate itself an important part in its recruitment. Seventy-five Senators ("Sénateurs inamovibles") were elected by their colleagues for life. This institution was abolished by the Revision of 1884. The last life Senator died in 1918.

(*b*) The Constitution took special care in determining the electorate of Senators. Side by side with the Chamber, representing the masses, it proposed to set up a body which should represent the "commune". Every "commune" should send to the electoral college of Senators *one delegate only*, chosen by the Municipal Council from among its own members. The National Assembly realized that the

village communes were politically conservative, and as all "communes" were equally represented, the majority in the Senatorial Electoral College was ensured for small and conservative "communes".

(1) The Revision of 1884 tried to put an end to that system which gave the majority in the Senatorial Electoral College to the Conservatives. This Revision introduced a new rule according to which the number of delegates from the Municipal Councils to the Senatorial Electoral College varied according to the number of councillors in each Municipal Council. It was thought that thus large towns (with large Municipal Councils) would be more strongly represented in the body electing the Senators. But the proportion is still far from being fair, e.g. Marseilles, with 500,000 inhabitants, sends twenty-four delegates to the Senatorial Electoral College—while seventeen towns of Bouche du Rhône, with altogether only 30,000 inhabitants, are represented by the same number of delegates.

(2) In a small electoral college a few votes often decide the issue of elections; consequently everything will be done to obtain them. The Electoral College of the Senate, being small, is exposed to corruption and administrative pressure. A remedy for this, according to M. Barthélemy, would be found in a modified universal suffrage:

"I should like to see Senators elected by men of thirty from amongst men of forty."

(3) Owing to the special constitution of the Senatorial Electoral College, it is composed mainly of "bourgeois".

(4) The nine years' duration of a Senator's office is the chief attraction for a prominent member of the Chamber of Deputies to seek election to the Senate, instead of being subject every four years to the anxiety of an electoral campaign for re-election into the popular Chamber. This accounts for emigration of leading men from the Chamber to the Senate—a fact beneficial to the Senate but injurious to the Chamber of Deputies.

III

The Senate is created with the object of "resisting". It resists, but its method is inertia rather than open revolt against the decision of the popular Chamber.

If we estimate what policy the Senate follows either by open resistance or by deft side-tracking, we will find:

1. That the present-day Senate is sufficiently advanced from the purely political point of view. Having originally had a Conservative majority it gradually lost it. Nowadays the Right Wing of the Senate consists only of eleven members.
2. The Senate is hostile to a fiscal system with democratic tendencies. As was mentioned above, the Budget, having passed through the Chamber

of Deputies, often reaches the Senate so late that there is no time to discuss or modify it before the beginning of the new financial year. Thus the Senate used to pass the Budget without important modification; but recently the Senate has not hesitated to reject the Budget passed by the Chamber, and to enforce one or several monthly Budgets ("Douzièmes Provisoires").

The Senate resists any reforms of taxation which would strike too hard at acquired wealth.

3. The Senate is loth to pass laws impregnated with the spirit of State Socialism. It is opposed to nationalization in all its forms; however, forced by political necessity, it agreed to the purchase of the railways of the West by the State.
4. The policy of the Senate is to delay, without permanently impeding, the actions of the popular Chamber.

In brief, the Senate follows very slowly, but none the less steadily, the advance of political affairs.

The Senate, so to speak, resists, but its resistance may be compared with the action of brakes as a safety device. Thus it would be unfair to put the blame for all delays in legislation on the Senate alone. Such delays are often imposed by the Chamber of Deputies itself. We know that in really urgent matters the principle of two Chambers does not necessarily impede legislation. Furthermore, the prevalent fault in the drawing up of laws is not that of slowness but of haste. Laws, in order to be fundamentally sound, must be drawn up with exhaustive deliberation.

The fundamental principle of organized democracy is the existence of a Second Chamber.

CHAPTER VI

PRESIDENT OF THE REPUBLIC

THE French Government is made up of two elements: the first is fixed, permanent, and stable—the President of the Republic; the second is mobile—the Ministers, nominated by the President of the Republic according to more or less precise indications of the parliamentary majority, and who can be overthrown by that majority.

I

The President is elected by the Congress, i.e. Chamber of Deputies and Senate forming one Assembly at Versailles. This method has one great advantage—it is quick.

N.B.—In 1848 the President, elected by universal suffrage, overthrew the Republic and established the Second Empire (Napoleon III).

1. An absolute majority is required in presidential elections: voting will continue until one candidate obtains more than half the votes polled.
2. The President is elected for seven years. That duration of office was fixed by Marshal MacMahon, who was the head of the French State at the time when the Constitution of 1875 was drawn up.
3. According to the Constitution the President of the Republic at the end of his time of office is indefinitely eligible for re-election. In practice only Jules Grévy has been re-elected (1885), but he resigned two years later. Since then it has become

a political tradition for a newly elected President, in his thanksgiving address the day after election, to make it clear that he does not desire to be re-elected.

II

The Constitution endowed the President with almost Royal dignity and prestige.

1. He receives a salary of 2,000,000 francs per annum, out of which he must defray certain expenses. This sum is yearly voted by Parliament, as it is included in the Budget.
2. He resides in the Palace of Élysée in Paris, and his country homes are Fontainebleau and Rambouillet.
3. He is Grand Master of the Legion of Honour.
4. He is protected against libel in the Press by special law ("délit d'offence").
5. He is declared irresponsible for all acts committed during office, except for high treason.

N.B.—He is not irresponsible, however, for offences committed in private life. Still, it is his special privilege to be tried by the Senate.

III

The President of the U.S.A. is the real chief of State; his Ministers are the tools of his own policy. He dismisses them at will.

The President of the French Republic is *not* the chief

of State; the political life of France is directed by the Prime Minister, backed by Parliament.

During the war, the chief man in France was M. Clemenceau ("Président du Conseil"), and *not* M. Poincaré (President of the Republic); the chief man in England was Mr. Lloyd George, the Prime Minister; the chief man in the U.S.A. was Mr. Wilson, the President. Hence the position of President of the French Republic is similar to that of the King of England. *He is head of the State, but not head of the Government.*

1. The Constitution of 1875 intended to make the President a powerful Chief of State. (The object of the Constitution of 1875 was to establish a Republic which could be easily converted into a Monarchy.) The following are the powers granted to the President:

   (*a*) He can close the session of Parliament after five months from its beginning.
   (*b*) During session he can suspend the sitting of the Parliament twice for a period not more than one month each.
   (*c*) With the approval of the Senate he can dissolve the Chamber of Deputies "en bloc". This constitutes the Right of Dissolution, used by MacMahon in 1877.
   (*d*) He shares with members of both Assemblies the power of initiating laws.
   (*e*) He can veto or delay laws.
   (*f*) He can always appeal to public opinion by messages.

(*g*) He is head of the Army and Navy, and has theoretic right to command them.

(*h*) He has the right of Supreme Pardon ("droit de grâce").

(*i*) He alone represents France both at home and abroad.

(*j*) He appoints ambassadors to foreign countries and foreign ambassadors present their credentials to him.

(*k*) He alone binds France by his signature.

2. The Constitution has made it difficult for the President to use the powers which it has given him.

(*a*) It wanted the President to represent the people, but it isolated him from the people.

(*b*) It wanted to make him independent of the Parliament, and yet it is Parliament that elects him.

(*c*) It endowed him with the right of Irresponsibility, but in a country with great political experience and imbued with the love of justice he alone can act who is responsible for his actions. Ministers are responsible, the President is not. Hence, Ministers govern and not the President.

3. Circumstances have also decreased the authority of the President. From the outset the Presidency began to have its powers diminished.

(*a*) Marshal MacMahon used the Right of Dissolution and dissolved the Chamber in ("events of May 16th") 1877. The nation

resented it; he resigned from the Presidency. Since then no President of the Republic has dared to exercise the Right of Dissolution.

(*b*) Jules Grévy was elected instead of MacMahon. In 1848 he was champion of the ideal of a Republic without a Parliament. Thus, having attained the Presidency, he considerably diminished its dignity. In his Presidential Address he solemnly promised never to oppose the will of the nation as expressed by its constitutional organ (the Parliament), and never to use his special Presidential powers.

(*c*) Ever since then the mistrust of the Republican Party towards men who could exercise their Presidential prerogatives has excluded them from the Presidency.

4. Nevertheless, the President, though less powerful than intended by the Constitution of 1875, is still an indispensable part of the mechanism of the State:

(*a*) He personifies the unity of the nation.

(*b*) He appoints Ministers. As there is no political party which possesses a working majority in the French Parliament, the President of the Cabinet must be chosen by the President of the Republic. All Ministers of the Cabinet are also officially appointed by him.

(*c*) The President exercises great influence and power of persuasion, and being placed somewhat outside the range of political passions, he

is able to gain a clearer perception of political problems. Nothing can be done without his signature, and if he does not actually veto a certain measure, he can always delay it, while in the meantime his persuasion may prevail.

The remedy against the effacement of the President's importance would be provided by the extension of his electorate, namely, by the Senatorial Electoral College plus the Senators.

CHAPTER VII

MINISTERS

THE classic theory of a Parliamentary Régime is the Balance of Power: on one side, Parliament; on the other, the head of the State. The general direction of public affairs must result from the collaboration of these two organs. The instrument of this collaboration is the Cabinet, i.e. the whole body of Ministers. The President of the Republic nominates Ministers; the Parliament can overthrow them. A Cabinet is bound to resign when it no longer enjoys the confidence of Parliament; this constitutes the Political Responsibility ("Responsabilité politique"). In fact, owing to the effacement of the Presidency (see before), this theoretical balance is destroyed.

Now, the prime factor of Government is the Cabinet, although advised by the President and controlled by Parliament.

I

ORGANIZATION OF THE CABINET

1. The number of Ministers is theoretically fixed by the President of the Republic; in practice, by the statesman appointed by the President of the Republic to form the Government (cf. Prime Minister of Great Britain). Hence the number of Ministers is extremely variable.

2. *Under-Secretaries of State.*

   These are co-opted by the Cabinet. Their number

varies as well as their powers, which are determined for each one personally by a decree. The following are typical examples of appointments of Under-Secretaries of State:

(*a*) It is desirable to attach a political section of the Chamber to the Government. As there are no portfolios available, a semi-portfolio is granted to a representative of this section.

(*b*) It is considered necessary to increase the efficiency of some ministerial department; a Member of Parliament is attached to it with the title of Under-Secretary of State.

(*c*) Occasionally it is considered necessary to endow with special authority some expert State official. He becomes Under-Secretary of State.

3. *Nomination and Dismissal of Ministers.*

According to the Constitution of 1875 the President of the Republic nominates and dismisses Ministers. Their appointment must be sanctioned by another Minister in office ("contreseing Ministériel"). This shows that the responsibility of that nomination is accepted by the sanctioner, as the President of the Republic is irresponsible.

4. *Ministers form a Council.*

The President of the U.S.A. directs personally the policy of the State, thus personifying unity of Government. Under a parliamentary régime this unity is obtained by the deliberation of Ministers in the *Council of Ministers*. That institution is in-

directly accepted by the Constitution. There are two kinds of ministerial deliberations:

(*a*) "Conseil des Ministres"—held at the Élysée in the presence of the President of the Republic. He plays a passive part: he neither presides over this Assembly nor votes in it. He only expresses his authoritative opinion and gives his signature to the decision reached.

(*b*) "Conseil de Cabinet"—held without the presence of the President of the Republic.

5. There is a President of the Council of Ministers (cf. Prime Minister of Great Britain). He directs the deliberations of Ministers. He represents the general policy of the Government before the Chambers, and has to answer in the most important interpellations. He ensures co-ordination of different Governmental departments. Therefore it would seem that the President of Council should be a Minister without portfolio; in practice he usually is head of a Ministerial department as well. Above all, he must be a statesman. In Great Britain the Prime Minister is usually the leader of the majority party. But owing to the special characteristics of the French Parliament the President of Council usually does not represent such a majority.

II

Parliamentary Control and Political Responsibility of Ministers

The Parliament controls Ministers *a posteriori*. The Government conducts a certain policy. As soon as the

policy manifests itself in facts the Parliament controls it. If it disapproves, the Government resigns. The political control of the Government by the Chambers is exercised in one of the following ways:

1. "*L'Enquête*" (*Inquiry*)

   Is an examination of policy by a parliamentary commission, which can call witnesses. This method is rarely used.

2. "*Questions.*"

   This applies to a detail of administration.

   (*a*) When asked by word of mouth in the Chamber two speeches only are allowed: that of the member who asks and that of the Minister who replies. The procedure is terminated by the declaration of the President of the Chamber, "The incident is closed".

   (*b*) To save time of the Chambers, or to facilitate the control over delicate matters, such as Foreign Policy, the procedure of the written question was instituted in 1909. A member's question in writing is inserted in the *Journal Officiel*, where the Minister's reply is also written.

3. "*L'Interpellation*"

   Is a more energetic procedure of parliamentary control over the Government. It enables a Member of Parliament to demand an explanation from the Government either of a definite action or general policy. The interpellation leads to a general debate, which is concluded by a vote expressing the opinion of the Assembly upon the object of the interpellation. The motion voted on is called "l'ordre du jour".

(*a*) "L'ordre du jour pur et simple."
The Chamber reserves its opinion, and the President declares that the Chamber will proceed to the Order of the Day.

(*b*) "Ordre du jour motivé."
This is the Vote of Censure. The President declares the Chamber's confidence or lack of confidence in the Government. In the latter case the Government is obliged to resign.

The political responsibility of Government is collective ("solidaire"). However, in some cases where administrative acts are concerned for which one Minister only is responsible he will bear the responsibility personally and he alone will have to resign.

4. *Duration of Cabinets.*

Ministers remain in power as long as the Parliament supports them, hence the duration is variable; some Cabinets last only a few days; others, over two years. A new Cabinet does *not* mean a new set of Ministers. Many Ministers hold office in different Cabinets with the same or different portfolios.

5. *Choice of Ministers.*

It is a rule of the parliamentary régime that the Ministers can only be chosen from among Members of Parliament. In France this rule is general, but not absolute: Ministers of War and Marine are often technical experts chosen outside Parliament.

CHAPTER VIII

FOREIGN POLICY

In spite of great achievements of French diplomacy since 1870 a certain section of public opinion accuses it of not being sufficiently democratic. It is true that in the domain of Diplomacy democratic progress is always very slow. Here again the Constitution of 1875 has found a compromise solution.

I

Theoretically it is the President of the Republic who represents the nation in its external relations: French ambassadors negotiate in his name; he conducts negotiations himself; foreign ambassadors, ignoring the Chambers, present their credentials to him; his signature only is binding on the country.

II

1. *Special Control over certain Treaties.*

   According to the Constitution the following treaties cannot be concluded without the sanction of the Chambers.

   (*a*) Treaties of Peace.
   (*b*) Commercial Treaties (fixing of Customs and Tariffs, Navigation Treaties, etc.).
   (*c*) Treaties involving State Funds.
   (*d*) Treaties relative to individuals (dealing with their judicial capacity, civil and political rights, and nationality).

(*e*) Treaties relative to property rights of French citizens abroad.

(*f*) Treaties involving modifications of national territory.

Drafts of above-mentioned treaties must be previously voted by the Chambers, and only then can they be signed by the President of the Republic, thus making them binding on the country.

According to Article 8, Law of July 16, 1875, preliminary parliamentary approval is not required for the following treaties.

(*a*) Great Political Treaties.

(*b*) Treaties of Alliance.

2. *General Indirect Control—A Result of the "Parliamentary System."*

The Parliament also exercises an indirect control over Foreign Policy.

(*a*) Every year the Budget Commission presents to the Parliament a comprehensive report on the Ministry of Foreign Affairs, which includes an outline of the Foreign Policy of the coming year. It rests with the Parliament to pass the demanded credits or to reject or curtail them. Thus the Parliament controls Foreign Policy.

(*b*) Indirect control can also be exercised by means of interpellations or questions on Foreign Policy in the Parliament; this method was seldom put into practice before the war, but since the war it has become general.

III

The Minister of Foreign Affairs

The principal organ of the direction of French Foreign policy is the Minister of Foreign Affairs. The President of the Republic rarely attends to the details of International Relations. He supervises their general direction, leaving the effective control to the Minister of Foreign Affairs.

IV

The Problem of Secret Diplomacy

1. The democratic régime entails publicity of all procedure, decisions, and acts of the Government in order to facilitate parliamentary control. This principle applied to diplomacy could be compared to a game of cards in which the democratic State (e.g. France) alone shows her hand. This, of course, is not the case; but the democratic principle of publicity of procedure is adhered to in so far as the French Government keeps the public informed of its diplomatic negotiations, but only as far as is considered safe for the general interest of the nation. The channels of publicity in this domain are—

   (*a*) Official communications given to selected papers.
   (*b*) Declarations to the Chambers either in Committee or in Public Session.
   (*c*) Speeches or toasts made at official functions.
   (*d*) "The Yellow Book" ("Le livre jaune"), a book

occasionally published by the Government, containing documents relating to Foreign Policy.

2. According to the text of the Constitution the President of the Republic enjoys the right to make secret treaties. But "he shall inform the Chambers of them as soon as the interest and safety of the State permit". Hence this secrecy is only temporary. The duration of this secrecy rests with the President. A certain section of public opinion clamours for the abolition of this secrecy as contrary to democratic principles. But history provides us with precedents in favour of secret diplomacy: the Franco-Russian Alliance, the "Entente Cordiale", the "Amitié Italienne", are the results of secret diplomacy, and owing to them France has been able to recover from the state of isolation and weakness in which the disaster of 1870 had left her. Therefore "Democratization of Diplomacy", at least at present, is not urgently needed.

CHAPTER IX

THE ADMINISTRATION

THE administration assures the everyday life of the State by the functioning of various departments and public services. The present-day administration in France corresponds, at least in its outlines, to that created by Napoleon; but since 1875 this Napoleonic administration has been democratized. The administration is concerned with the general interests of the State (I) and the particular interests of groups of inhabitants (II).

I

THE ADMINISTRATION OF GENERAL INTERESTS OF THE STATE

1. This administration consists of central departments ("les bureaux") and of executive agents on the spot. At the head of each department is a Minister who controls the activities of the permanent staff of civil servants in his department. The latter are divided into two categories. executive's agents spread over the country and members of offices, the latter directing the work of the former. The central organization of each department is fixed by a decree of the President of the Republic, issued after the approval of the State Council. The recruiting of the Civil Servants as a general rule is subject to a competitive examination. Their salaries are very low.

2. "*Le Cabinet.*"

Ministers guide and control the activities of central offices composed of these Civil Servants, but they cannot do so single-handed. For that purpose they are assisted by

personal collaborators chosen by Ministers themselves outside official circles. These immediate collaborators of a Minister form what is called "le Cabinet". This institution has but a *de facto* existence, as it is defined neither by the Constitution nor by the law.

3. *The State Council.*

This important institution can be considered as a legal adviser and technical expert who assists the Government in the solution of the most important problems of the general administration. The origin of the State Council can be traced to the King's Council of the "Ancien Régime". Under Napoleon it played a very important part in the life of the French State; but the National Assembly of 1875 has deprived this institution of its original importance. The staff of the State Council is divided into two categories: at the top—the State Councillors, who take decisions in the name of the Council; at the bottom—Masters of Request and Auditors, who prepare the matter for such decisions by previous examination and reports. The State Council is divided into five sections, one for the judgment of administrative actions (see Chapter X, "Administrative Justice") and four sections for the examination of administrative affairs. Each section has a president, while the whole body is theoretically presided over by the Minister of Justice. Consequently the actual president bears the title of Vice-President. The staff of this institution consists of

22 Auditors of the second class,
18 Auditors of the first class,
32 Masters of Request,
40 State Councillors.

The high standard of the staff is assured by the necessity of passing a competitive examination in order to become an Auditor of the second class. After eight years' service as an Auditor of the second class one is either appointed an Auditor of the first class or one has to retire. Two Masters of Request out of three have to be chosen amongst Auditors of the first class, and one State Councillor out of two has to be chosen among the Masters of Request, the remaining vacancies being filled from among outsiders by the Minister of Justice. The State Council examines some 30,000 administrative affairs.

Another of its important functions consists in drawing up new rules of public administration in accordance with the general outlines approved by Parliament.

In some special cases the Government, according to the law, is bound to ask the advice of the State Council before taking a decision, but the advice of the State Council is always *optional* and *secret*. The Government is free to follow or not to follow the advice, which is not made public. The judicial functions of the Council of State will be dealt with separately in the next chapter.

4. The above-mentioned authorities sit in Paris in close contact with their respective Ministers, and their task is to direct and co-ordinate the activities of the vast number of executive agents spread over the whole territory of France. The competence of all these executive agents is limited by certain territorial boundaries, which in most cases correspond to the administrative divisions of the country set out by the "Constituante". At its base lies the old division of France into provinces; each province has been divided into a certain number of "départements",

each receiving a geographical name; each "département" is divided into "arrondissements"; each "arrondissement" consists of a certain number of "cantons", while the smallest fraction of administrative division is called "commune", and corresponds to the outlines of a pre-Revolution parish. In every department there is a superior agent for each of the various branches of administration; but for some of them the outline of a department proved to be too small a territorial division. Hence, for military administration, France is divided into 21 "régions" (each consisting of several departments), with a commandant of an army corps at the head of each; for the administration of justice, 26 "ressorts", with a court of appeal in each, and with a First President and a Procurator-General at the head of each; and, for the administration of public instruction, 17 "académies" with a "recteur" at the head of each.

The competence of some officials only extends over a territory which is smaller than a department. So, for example, there is one Justice of the Peace in each "canton".

5. *The Prefect.*

At the head of each department stands the prefect. He is a political agent exercising his authority over all other officials in the department. He is assisted by a "Conseil de Préfecture", which plays in the outlines of the department an analogous part to the Council of State. These councils consist of three to four members, and also play the part of law-courts in administrative justice (see Chapter X). The Prefect is also assisted by the "Secrétaire Général. The "Sous-Préfets", one of whom

is placed at the head of each "arrondissement", are under the direct orders of the prefect. Prefects are appointed by the President of the Republic on the recommendation of the Minister of the Interior, who is their direct chief. As prefects are purely political agents, there are no special conditions or capacities required from them. This gives a free choice to the Government in their nomination. From the very nature of the prefect's office, a change of Government entails a rearrangement of prefects, while a complete change of policy results in great changes amongst them. Absolute dismissals of prefects are rare. They are usually moved to the State Council or to some other public office. Not only is a prefect called upon to supervise in a political capacity the various branches of administration in his department, but he is also responsible for the maintenance of public order, and has to take decisions upon innumerable technical matters, and appoints a large number of technical agents. Besides, the famous "article dix" of the Criminal Code of Instruction endows the prefect with the powers of an examining judge; but since 1906 the exercise of this function is subject to previous reference to the Minister.

II

Administration of Particular Interests of Groups of Inhabitants

The boundaries in which the particular interests of groups of inhabitants are administered are the same as the ones used for the general administration: "département", "arrondissement", "canton", and "commune".

1. "*Le Département.*"

A department is a legal personality ("personne morale"); it possesses property, votes a budget, collects taxes, concludes contracts, buys, sells, manages different institutions, etc. The organ which expresses the free will of the department is the General Council ("le Conseil général"). Every department has its "Conseil général", composed of General Councillors, elected by universal suffrage for six years, renewable by half every three years. Every "canton" of the department is represented by one General Councillor. Three-quarters of the General Councillors must be elected from amongst the residents of the department, while one-quarter ("le quart forain") may consist of non-residents, but only ratepayers of that department. The General Council sits twice a year: during the Easter and the August sessions. During the rest of the year the affairs of the department are controlled by the "Commission départementale"—a delegation of four to seven General Councillors elected for one year by their colleagues. In principle this body must assemble at least once a month. The following are some of the various activities of the General Council: the providing of funds for construction and upkeep of public buildings, highroads, local railways, and hospitals. It also performs important charitable work, etc.

2. "*L'Arrondissement.*"

Although an "arrondissement" is not a legal personality like a department, it possesses a "Conseil d'Arrondissement" composed of at least nine members elected by universal suffrage for six years, renewable by half every

three years. Each "canton" of an "arrondissement" is represented by one councillor. In cases where there are less than nine "cantons" in an "arrondissement", the more important ones are represented by two councillors. This assembly has only fictitious attributions. It can protect the interests of its "arrondissement" by protests and advice. The "arrondissement" councillors can, in certain cases, perform the duties of the "Sous-Préfets", participate in the "Conseil de Revision" (a committee for examining the fitness of recruits for military service), and take part in the Senatorial Elections. The "Conseil d'Arrondissement" as well as the office of a "Sous-Préfet" is an unimportant institution, and their abolition would hardly be noticed. Every "arrondissement" has its rate-collector and represents a constituency for elections to the Chamber of Deputies under the "Scrutin uninominal" system.

3. "*Canton.*"

A "canton" is simply a territorial division, limiting the competence of certain State officials, and represents a constituency for elections to the General Council and the Council of "Arrondissement". It has no council of its own. Nevertheless, a "canton" is an important business centre. The borough town—the capital of a "canton"—is the place where markets are held and where certain officials reside. There is a Justice of the Peace in each "canton" as well as a rate-collector and an inspector of taxes; a brigade of the "gendarmerie" is quartered there, etc.

4. "*La Commune.*"

All "communes" in France, the rural ones as well as the big-town "communes", are administered in the same way.

There is a "Conseil municipal" in each, composed of 10 or 36 members (54 for Lyons, 80 for Paris), elected by universal suffrage, in principle by the "Scrutin de Liste" system for the whole "commune". In exceptional cases a "commune" might be divided into sections, each of which elects a certain number of councillors. Municipal councillors are elected for four years and are renewable "en bloc". All residents of the "commune" are eligible, while not less than one-quarter may consist of non-resident ratepayers. A Municipal Council holds four ordinary sessions, each of a fortnight's duration. Every Municipal Council elects among its members a "maire" and his deputies (adjoints). One of the latter may, in special cases, be substituted for the former. The "maire" performs two functions:

(*a*) He acts as the executive of the Municipal Council.

(*b*) He is also an agent of the State—an immediate subordinate of the prefect in the ranks of the general administration. As such he is bound to supervise the application of the laws, to maintain public order in his "commune", and to assist judicial authorities in the apprehension of criminals, etc.

All the above-mentioned elective offices (general councillors, councillors of the "arrondissement", and municipal councillors, "maires" and their deputies) are legally unsalaried.

CENTRALIZATION AND DECENTRALIZATION

When citizens enjoy the right to elect the administrators of public affairs of local interest, and when these

administrators enjoy the authority of taking decisions in such affairs, we have an example of decentralization. If, on the contrary, public affairs of local interest are directed by the Central Government directly or through Governmental agents on the spot, we have an example of centralization. Under Napoleon, France was a centralized country; all members of local administrative councils were not elected but appointed by the State, and were deprived of the power of decision. Since then a régime of decentralization has been gradually introduced. At present the "commune" is more decentralized than a department (the latter has no elected executive like the "maire" in a "commune").

"TUTELLE ADMINISTRATIVE"

One must not forget that the decentralized department and "commune" are only fractions of the whole country, and it is all-important that their local activity should not be directed against the general interest of the whole nation. To ensure this an institution called "Tutelle administrative" has been created. The administrative supervision is exercised both on the staff and on the decisions of local authorities.

1. *Supervision of the Elected Staff of Local Administrative Councils.*

   (*a*) The President of the Republic, having dissolved a General Council, must immediately inform the Chambers, if the Parliament is in session. The Parliament fixes the date of new elections, and may entrust the "Commission départe-

mentale" with the management of current affairs until a new council is elected. If the Parliament is not in session, elections must take place on the fourth Sunday after the decree of dissolution. Dissolutions of General Councils are extremely rare.

(*b*) A Municipal Council in urgent cases may be suspended for one month by the prefect, with the approval of the Minister of the Interior. It can be dissolved by a decree of the President of the Republic containing reasons of dissolution after a decision taken in the Council of Ministers. A new Municipal Council must be elected within two months of the date of dissolution. Such dissolutions are often necessitated by the split of votes in the Municipal Council and the resulting deadlock of activities. Between the dissolution and the election of a new Council current affairs are administered by a "délégation spéciale" appointed by the President of the Republic.

(*c*) The "maire" elected by the Municipal Council may be dismissed by the President of the Republic, suspended for one month by the prefect, and for three months by the Minister of the Interior. A dismissed "maire" retains the title of a Municipal Councillor, but cannot be re-elected within a year. According to the law of 1908 a "maire" can be neither dismissed nor suspended without an opportunity of making a written vindication of his actions.

2. *Supervision of the activities of Local Administrative Councils.*

(*a*) Ordinary deliberations of the General Council can, on the ground of their unsuitability, be suspended by a simple decree.

(*b*) By-laws issued by Municipal Councils become obligatory one month after being deposited at the "préfecture", and can only be annulled for illegality. In fact, any deliberations of the Municipal Council of any importance are subject to the approval of the prefect.

(*c*) The administration laws contain a list of expenses which local councils are bound to meet. If a council neglects to do so, the central power (the President of the Republic in the case of a department and the prefect in the case of a "commune") supplies the necessary money by an official expenditure note ("inscription d'office") and imposes on the citizens an official levy to balance that expense ("imposition d'office").

MORE VIGOROUS CENTRALIZATION FOR CERTAIN IMPORTANT TOWNS

1. For purely political reasons, and owing to the special importance of the city of Paris, its local administration is less decentralized.

(*a*) Paris is divided into twenty "arrondissements", each distinguished by a number. Each "arrondissement" is composed of four quarters, each distinguished by a special name. Every quarter

elects by "Scrutin uninominal" one Municipal Councillor. These Municipal Councillors of the City of Paris are at the same time members of the General Council of the Department of the Seine, the latter being also composed of the General Councillors representing the remaining part of that department. The Municipal Council of Paris sits practically the whole year round.

(*b*) The City of Paris has no "maire". The functions of this magistrate are performed by two departmental authorities: the Prefect of the Seine and the Prefect of Police. (At the head of each of the twenty "arrondissements" of the town of Paris are officials called "maires", but, being appointed by the President of the Republic upon recommendation of the Minister of the Interior, they do not perform any communal functions, and are mere political agents.)

(*c*) In principle, before becoming obligatory, all the deliberations of the Municipal Council of Paris are subject to the express approval of the Prefect.

2. Owing to its special importance the town of Lyons has also some peculiarities in its municipal organization. It is divided into six "arrondissements", each of them administered by two elected deputy "maires". The town "maire's" competence does not extend over the administration of police, which is under the authority of the prefect of the department.

3. In 1909 the same rule was introduced at Marseilles owing to the increasing importance of that port.

CHAPTER X

JUSTICE

THE traditional doctrine of separation of powers, described by Montesquieu, demands that the function of judging should be entrusted to an authority entirely independent of the Government. This principle is not completely adopted in France.

(*a*) Judges are not completely independent.
(*b*) Some of them are not independent at all.

Thus a single judicial hierarchy does not exist in France.

I

JUDICIAL ORDER

The function of judging is entrusted to permanent officials, forming the "magistracy". Outside this body is the Justice of the Peace ("Magistrature cantonale") as well as non-professional judges.

A. CIVIL JUSTICE

1. *Justice of the Peace.*

In each "canton" resides a Justice of the Peace.

(*a*) He must be appointed by the President of the Republic on the recommendation of the Minister of Justice.
(*b*) Anyone who holds a diploma in law and has a ten years' record of public functions is eligible for this office.

These Justices are not permanent, but are removable by a special commission by the Minister of Justice.

The functions of the Justices of the Peace are:

(*a*) They must attempt to conciliate litigants before their cases are heard by the appropriate courts.

(*b*) They must protect those incapable of defending themselves (widows and minors).

(*c*) They decide:

(1) Definitely and *without appeal* (subject to control by the Court of Cassation for "excess of power"), cases involving less than 300 francs.

(2) *With appeal* to the Civil Tribunal ("Tribunal d'Arrondissement"), cases up to 600 francs.

A Justice of the Peace also aids the authorities to discover and prove crimes, and is himself a judge of petty offences.

2. *Tribunals composed of Non-Professional Judges.*

(*a*) There are about 200 commercial tribunals for settling commercial disputes with a possible appeal to the Court of Appeal. The "Consular Judges", sitting in these courts, are elected for two years by licensed merchants (of five years' standing) from among their own number. They must be at least thirty years old, and they enjoy the right of one re-election. The main characteristic of these elections is the number of non-voters.

M. Barthélemy criticizes this institution because the existing civil tribunals could deal with commercial disputes just as competently and for the same cost as "Tribunaux de Commerce".

(*b*) By the name of "Conseils de Prud'hommes" are known elective tribunals composed of an equal number of employers and employees, which decide labour disputes

without appeal, cases involving a maximum sum of 300 francs;

with appeal to Civil Tribunal, cases involving over 300 francs.

If the votes are equally divided, the case is retried by the same body—with the addition of the Justice of the Peace.

(*c*) "Le Jury d'Expropriation" is a body composed of twelve citizens selected by the General Council and either the Court of Appeal or the local Civil Tribunal, which may be challenged by the parties concerned. This body determines the amount of compensation for property expropriated from a citizen by a decree of the Civil Tribunal.

3. *Permanent Magistracy.*

The following are the points common to the various degrees of the French jurisdiction:

(*a*) The collegiate principle is applied in French Courts, except in the case of the Justice of the Peace. At least three judges must hear the case.

(*b*) Officials who act as judges in Tribunals of the First Instance in the Courts of Appeal and in the Court of Cassation belong to the "magistracy" and are permanent: they cannot be dismissed by the Government against their own wish; but

this independence of magistrates is not complete, and as soon as a magistrate seeks promotion he becomes dependent on the Government. Three-quarters of the magistracy are recruited by means of a competitive examination, the remaining quarter being appointed by the Minister of Justice. As for further promotions—they are made by the Minister of Justice from among the magistrates whose names are registered on a list compiled by a special committee ("Commission de Classement"), composed of the first President and the Procurator-General of the Court of Cassation, of four councillors of the same Court, and of directors of the Ministry of Justice. The Court of Cassation acts as the supreme Council of Magistracy: it imposes penalties on the permanent magistrates and can even dismiss them.

(*c*) The salaries of magistrates are generally very small.

(*d*) Side by side with the College of Permanent magistrates, in each Court there is a group of officials who form the so-called Public Ministry ("Ministère public"). These officials are not independent of the Government; their task is to supervise the application of the law in respective Courts, and they, to a certain extent, represent the Government in the Court. No Court can sit without the presence of at least one member of the Public Ministry.

(*e*) The legal procedure in French Courts is archaic, slow, expensive, and has an accusatory character.

4. *The Civil Tribunal.*

Cases which are not committed by special decrees to a special jurisdiction come before these tribunals.

They decide cases up to 1,500 francs. Above this limit an appeal is possible to the Court of Appeal. The Civil Tribunal itself acts as a Court of Appeal in cases previously tried by the Justice of the Peace and the Councils of "Prud'hommes" (above 300 francs). A Civil Tribunal cannot function without the presence of three judges: one president and two assistant judges. The president of a Civil Tribunal is invested with special powers—in urgent cases he can himself carry through necessary measures by an ordinance; he attempts to reconcile husband and wife before starting divorce proceedings, etc. The Public Ministry of the Civil Tribunal consists of a "Procureur de la République" and his assistants. Until 1927 each "arrondissement" had its own tribunal, but the recent development of communication has made this unnecessary. At present the number of these tribunals has been greatly reduced.

5. *The Court of Appeal.*

The principle put forward by the Revolution required a twofold jurisdiction: as a guarantee of fair trial a case had to be examined twice; the second examination, or the appeal, being brought before a tribunal of the same order. Under the Consulate, special Tribunals for Appeal were created, which under the Empire were called "Courts". Each of the twenty-five Courts of Appeal in France deals with cases previously tried in one of the Civil Tribunals of its "Ressort." A Court of Appeal is com-

posed of the following magistrates: one First President, Presidents of Chambers, and Councillors. The Public Ministry is composed of: one Procurator-General, assisted by general advocates and their deputies. Legal procedure in the Court of Appeal is similar to that in the Civil Tribunal. The Court of Appeal cannot sit unless five councillors are present.

6. *The Court of Cassation.*

The Judicial Order system is headed by the Court of Cassation. Its duty is to safeguard the respect of law and to ensure the uniformity of its interpretation. The Court of Cassation never examines questions of fact. It confines itself to examining whether the decision appealed against has been taken in conformity with the law. On the other hand, the Court of Cassation does not pronounce a decision of its own; it either confirms or quashes the decision of the subordinate jurisdiction. In the latter event the case is sent to be retried by another Court of the same order as that from which appeal was made. There is only one Court of Cassation in France; it resides in Paris. The magistrates composing it are: one First President, three Presidents of Chambers ("Chambre des Requêtes", the Civil Chamber, and the Criminal Chamber), and forty-five councillors. The Public Ministry is composed of one Procurator-General and six advocates. The proceedings before the Court of Cassation—which are in writing and are conducted by one of the sixty barristers ("avocats") of the State Council and the Court of Cassation—are characterized by a double examination. A case is first carefully examined in the "Chambre des Requêtes".

If this preliminary examination finds the appeal justified, it passes the case to the respective (Civil or Criminal) Chamber, where the final decision is taken.

B. CRIMINAL JUSTICE

The same judges who try civil cases administer criminal or repressive justice. The infringements of law are divided into three categories, according to the nature and severity of punishments pronounced.

1. "*Contraventions*",

or offences against police regulations and local by-laws, are dealt with by the "Tribunal de Simple Police". It is the Justice of the Peace who under this title tries such cases. His decision can be appealed against when he imposes imprisonment, or when fines and damages, excluding costs, exceed five francs. "Contraventions" committed on highways are dealt with by the "Conseil de Préfecture" (see Administrative Justice).

2. *Misdemeanours* ("*Des Délits*")

are tried before the "Tribunal Correctionnel". It is the Civil Tribunal which takes this name when administering repressive justice. Appeals against the decisions of this Court are brought before the Chamber of Correctional Appeals of the Court of Appeal.

3. *Felonies* ("*Les Crimes*")

are tried in the Assize Court ("La Cour d'Assises"). This is a special jurisdiction which holds sessions at the capital of each department. The magistrates composing it are specially appointed for each session. It is composed

of two professional judges forming the Court itself, and twelve citizens forming the jury. The President of the Court is appointed from amongst the councillors of the Court of Appeal by the Minister of Justice, on the advice of the Procurator-General; the two remaining judges, or assessors, are appointed either from amongst the councillors of the Court of Appeal, if such Court resides in that particular town, or from amongst the members of the local Civil Tribunal. The duty of the jury is to pronounce their opinion on given facts without consideration of the judicial consequences of their verdict. The jury, consisting in the majority of "petits bourgeois", shows an extreme severity in cases of crimes against property, and an indulgence in cases of assault; as a matter of fact the jury usually considers the judicial consequence of the verdict; therefore it often acquits criminals whose punishment seems to it excessive ("crimes passionnels", child murder, arson with the object of defrauding insurance companies, etc.). Hence councils transform as many felonies as possible into misdemeanours in order to bring such cases before the Correctional Tribunal instead of before the Assize Court. The decision of the Assize Court is final and no appeal is possible (except to the Court of Cassation).

II

Administrative Justice

(*a*) In England there is only one jurisdiction dealing with cases between individuals as well as with cases where both individuals and administration are concerned. In France, however, special

jurisdiction has been set up which deals with cases in which administration is involved. The principle which is at the base of this special jurisdiction is the one of the separation of authorities (administrative from judicial) and was brought forward by the Revolution.

(*b*) Under Napoleon this separation of authorities was carried still farther. That new system of separation which developed during the course of the nineteenth century led to a division of administration into three categories:

(1) The active administration, embodied in individual authorities (such as the President of the Republic, the Prefect, the "Maire"), whose task is to supervise public services;

(2) The deliberative administration, embodied in administrative assemblies (such as General Council, Municipal Council), whose task is to take decisions on questions of administration, the execution of which decisions is performed by the active administration;

(3) Consultative administration, which confines itself to giving advice (Council of State and Council of "Préfecture"). It is this section of administration which was invested with the judicial functions in administrative affairs.

(*c*) With the Restoration, the State Council again lost its power of decision, and remained merely a consultative body until the law of August 11, 1872, delegated the judicial functions in administrative affairs to the State Council. Since then it

possesses a power of decision of its own in judicial matters, i.e. it has the power of passing sentence.

The fundamental idea of administrative jurisdiction undoubtedly represents privileges to the advantage of the administration, but the final results prove to be completely different. Ordinary judges are too timid to exercise a control in the domain of administration which may be interpreted as an incursion or as a usurpation; on the contrary, administrative jurisdiction, being a part of the administration, proves much bolder in compelling it to respect the law. In fact, the State Council is the great protector of the rights, property, and liberty of individuals against the administration.

1. *The State Council—Central and Principal Organ of Administrative Jurisdiction, Protector of Liberties and Individuals.*

Like the Court of Cassation which dominates the Common Justice system, the State Council dominates the Administrative Justice system, but the difference between the two is that the State Council acts as a Court of Cassation, Court of Appeal, and as a Court of First Instance in administrative matters.

(*a*) The State Council as the Court of Cassation for administrative jurisdiction with a limited competence.

There are administrative jurisdictions whose competence is limited by a strictly determined

category of affairs; such jurisdictions are the medical examination boards for enlistment in the Army, and the Court of Accounts. These jurisdictions take final decisions in point of fact, but are subject to the control of the State Council in point of law.

The Court of Accounts is an institution created with the object of auditing the accounts of officials who have actual management of public funds. It is composed of one First President, three Presidents of Chambers, senior councillors, consulting councillors, and auditors, as well as of a Procurator-General and an Advocate-General. The councillors are permanent, but are, however, subject in point of law to the control of the State Council. There is only one Court of Accounts in France, and, if a decision of that Court is quashed by the State Council, the case has to be retried by the same Court. Outside its judicial function the Court of Accounts plays an important part in financial politics; it assists Parliament in the preparation of the Law of Accounts. Moreover, the Court of Accounts annually presents the President of the Republic with a report on the state of finance—a document of the greatest importance.

(*b*) The Council of State as the Court of Appeal for the Councils of "Préfecture".

In each department there is a Council of "Préfecture" consisting of eight councillors, who receive very low salaries. In principle, the prefect

presides over the Council, but when this institution acts as a court of law it is presided over by a vice-president. The functions of public ministry are performed by the "Secrétaire Général" of the "Préfecture", which in that case is called "Commissaire du Gouvernement". The Council deals only with cases specially defined by the law—always in the first instance, and always with a possible appeal to the State Council. The overwhelming majority of cases tried in this institution deal with appeals against payment of direct taxes. The Council also deals with offences committed on the highways, and acts as a judge of the validity of elections to the Municipal Council and Council of "Arrondissement".

(*c*) The State Council as a Court of First Instance. Whenever a claim is made against a public service of the State, or that of a department or a "commune", it must be brought before the State Council in the first and last instance (unless otherwise expressly provided by the law). It is one of the five sections of the State Council, which performs the judicial functions in administrative justice. The spirit of this jurisdiction is expressed in the formula: "The State is honest." And it is the State Council in its capacity of a law court of administrative justice which compels the State to remain honest. It also deals with responsibility of public authorities for damages which might be caused by them to private individuals. The Council of

State also supervises the legality of administrative actions and annuls them in case of "excess" or "misuse of power" by officials concerned. The amount of cases dealt with by the State Council in the first instance rapidly increases—the most important reason for this increase being the growing confidence of citizens in the fair and firm justice of this tribunal, and the conviction that the State Council is the best judge against the State.

III

The Tribunal of Conflicts ("Le Tribunal des Conflits")

This tribunal settles all disputes which may arise between the above-mentioned two jurisdictions (Judicial Order and Administrative Justice). The composition of this tribunal has the characteristics of a Court of Arbitration. It comprises:

1. The Minister of Justice, who is its President;
2. Three State councillors elected by their colleagues;
3. Three councillors of the Court of Cassation, similarly elected;
4. Two members and two juniors elected by the above.

The Public Ministry is composed of one commissioner, chosen amongst Masters of Request of the State Council, and another, chosen amongst the Public Ministry of the Court of Cassation, as well as two juniors.

The presidency of the Minister of Justice deprives this Court to some extent of its arbitrary character. In

practice the Minister of Justice performs this duty in exceptional cases, when the votes of the judges are equally divided. It is characteristic that in four such cases which arose since 1872 the intervention of the Minister of Justice led to a decision in favour of the administrative jurisdiction. Hence the Tribunal of Conflicts protects the administration from any encroachment of the Judicial Order.

Whenever a Law Court has to deal with a case which might come within the competence of the administrative jurisdiction, the prefect invites the Court, by a declaration of incompetence, to drop the case; if his declaration is rejected, he himself appeals to the Tribunal of Conflicts. The latter considers the appeal, and, if it decides to quash it, proceedings are recommenced at the original Court from the point at which the case was suspended by the prefect's declaration.

The Tribunal of Conflicts tries some half-dozen cases annually.

IV

Political Justice

In all modern Constitutions political crimes have been removed from the competence of the Common Jurisdiction on the following grounds:

1. *In the Interests of the State.*

   It was considered that Ordinary Courts might show themselves timid and hesitating in the presence of politicians still in power, and who would perhaps regain their office after trial.

2. *In the Interests of the Accused.*

Political crimes do not inspire moral contempt. Therefore the Court called to judge them must be allowed the greatest freedom for consideration of motive, which is not and cannot be enjoyed by Ordinary Courts.

3. *In the Interests of the Courts, which must be protected from any Political Passions.*

It is the Senate, under the name of the High Court, which administers repressive justice in political crimes. While the House of Lords in England and the Senate in the U.S.A. are only empowered to judge by a decree of the Second Chamber, the French Senate may be empowered either by the Chamber of Deputies to judge members of the Government, or by the Government itself to judge political criminals. Certain crimes are deferred to the High Court (i) by reason of the rank of persons who have committed them (*ratione personæ*); (ii) by reason of their intrinsic character.

V

Military Justice

While in England a soldier remains a citizen, subject to the common jurisdiction, in France a soldier is kept apart from civil life during the period of his military service. All infringements of the law committed by soldiers are tried by special Military Courts. Their decisions are final, except for the control of the Criminal Chamber of the Court of Cassation in respect of the interpretation of the law.

CHAPTER XI

FINANCE

THE influence of the democratic principle of French Finances is manifested in two ways:

I. The management of public finance has been placed under the strict control of the nation's representatives.

II. The principle of democratic justice safeguards the fair distribution of the burden of taxation among citizens.

I

1. No taxes can be imposed on citizens without the consent of their representatives (the Parliament). Such is the fundamental principle of modern liberty, definitely proclaimed in the "Declaration of Rights" drawn up during the Revolution.

2. Before consenting to the necessary sacrifices to meet rational expenditures by taxation, the Parliament verifies their real need. It then authorizes the expenditures by a vote.

3. There are two systems of voting the State's expenditure and revenue:

(*a*) The so-called system "de l'abonnement". The expenditure is voted in one item and so is the revenue, i.e. the Government may dispose as it likes of the taxes. The first Budgets of the Restoration were voted according to that system.

(*b*) The alternative system, introduced in 1817, is governed by the principle of specification ("le principe de la specialité"); for example, sums voted for the infantry cannot be used for the artillery, etc.

Specification of expenditure is becoming more precise; in 1817 the Chambers had to sanction the expenditure of seven Governmental offices. To-day the Budget is divided into more than 1,000 specific items.

4. Once a year the Parliament is called upon to make a draft of expenditure and revenues. This is called the Budget, and it is binding on the Government. In order to safeguard regular and controlled finance the Budget is a single and entirely comprehensive document ("Le principe de l'unité et de l'universalité budgétaire"). An annual Budget safeguards a sound financial administration:

(*a*) It would be impossible to foresee financial needs of the country more than one year ahead.

(*b*) The voting of the Budget gives Parliament a control over the Government.

If Parliament has not passed the Budget by December 31st, it is compelled to vote one or several monthly Budgets, called "Douzièmes Provisoires".

5. To ascertain that the provisions of the Budget have been observed, the annual law of accounts ("La Loi annuelle des Comptes") was instituted in 1818. Unfortunately this checking of the Budget by the Parliament is

(*a*) performed with lack of attention during morning meetings.

(*b*) The voting takes place without debate, and without detailed examination ("par paquets").

(*c*) The vote is held sometimes after a delay of nine or even eleven years.

II

A. INDIRECT TAXATION

Under a system of "fiscal anæsthesia" the indirect taxes, which are paid in the act of consuming, circulating, or transferring wealth, play an important part:

1. Taxes on commodities are paid by the taxpayer without his noticing them, as they are included in the price of the goods. Although unfair from a democratic point of view (as they weigh more heavily on the poor), their abolition is hardly possible as they bring in a substantial part of the State revenue.
2. Democratic fiscal systems strike heavily at inheritances. Death duties are progressive. Duties on inherited property ("droits de mutation par decès"), combined with the "Taxe progressive", which affects the estate of a deceased person leaving less than four children living, may rise as much as 60 per cent., according to the amount of the inheritance.

   Appeals against indirect taxation may usually be brought before the local Civil Tribunal, sometimes before the Justice of the Peace.

B. DIRECT TAXATION

Democratic principle favours direct taxation, which is levied in proportion to the income of the taxpayer.

The direct taxes levied on various classes of income are as follows:

1. A $4\frac{1}{2}$ per cent. tax on industrial and commercial profits.
2. A $3\frac{3}{4}$ per cent. tax on agricultural profits.
3. A $3\frac{3}{4}$ per cent. tax on public and private salaries.
4. A $3\frac{3}{4}$ per cent. tax on profits from non-commercial sources.
5. A tax on Revenues from:
   Credits,
   Deeds of Property, or by
   Credits by mortgage or by note of hand,
   Deposits,
   Securities, etc.
6. A 5 per cent. tax on land profits.
7. A proportional tax up to $12\frac{1}{2}$ per cent. on gross income.

The features of recent fiscal legislation are:

1. Fairness—taxes are in proportion to income.
2. Abolition of "Indiciaire" system—exterior indications of income (rent of house, etc.) are ignored. The real income is taxed. It is gauged by the taxpayer's controlled declaration ("Déclaration contrôlée"), or by a third-party declaration ("Dénonciation du tiers").
3. The tax is personal—individuals, not things, are taxed.

4. Classification of Revenue—unearned incomes are more heavily taxed than earned incomes.
5. Taxes are progressive—the higher the income, the higher the tax.
6. Rebates. These are allowed from 5 per cent. to 50 per cent. on land—and general income tax for ratepayers with one or more dependents.

The taxpayer may protect himself against illegal exactions by

(*a*) An oral appeal at the "mairie" before a controller of taxes.
(*b*) Proceedings brought before the Prefect's Council with a possible appeal to the State Council.

CHAPTER XII

PUBLIC RIGHTS

THE following are the "Cardinal Liberties of the French People":

I

FREEDOM OF THE PRESS

A law, passed in 1881, and still in force, laid down the following principles regarding the Freedom of the Press:

1. *Suppression of "Régime Préventif"*, i.e. there are no restrictions on

   Printing,
   Publishing,
   Retailing,
   Placarding.

But the following rules must be observed:

For non-periodicals:

(*a*) They must bear the name of the editor.
(*b*) Two copies must be filed in the National Collection.

For periodicals:

(*a*) The name of the editor responsible must be registered by a simple declaration when the publication is founded.
(*b*) Two copies of each issue, signed by the editor, must be deposited.

The existence of a periodical publication is

immune from interference by Governmental or Judicial authorities.

2. *Abolition of the "Crime of Opinion" ("Délit d'Opinion").*

It is not a punishable crime to attack in print the Government, the Constitution, etc. Pornography alone is not entirely free from preliminary official scrutiny.

This freedom is partly limited as regards individual defamation, calumny, and insult. However, no preventive measures are taken, but the victim may subsequently claim damages through the Court. The same rules apply to the publication of false news.

3. *Competence of the Jury.*

"Freedom of the Press is the freedom of opinion" (M. Barthélemy). Therefore the Tribunal which should determine the guilt of the Press of infringing the law must represent public opinion; it was thought that the Assize Court, in the presence of a jury, should be an adequate tribunal for dealing with such cases. But the competence of the juries in these cases is often doubtful.

However, the "Tribunal Correctionnel" deals with:

(*a*) Defamation of character.
(*b*) Criminal sedition.

4. *Lack of Responsibility.*

Liberty should go hand in hand with responsibility. The law of 1881 ensured this liberty, but did not enforce responsibility. At law an editor is responsible for his publication; in fact, he is often only a figurehead. Public opinion clamours for a remedy for this abuse. But it would

be difficult, and perhaps unwise, to tamper with the law of 1881—the Magna Carta of the French Press.

II

Freedom of Assembly

The law of 1881 demanded twenty-four hours' notice for holding a public meeting. The day after the separation of the Church and State (1905) the Government and the Parliament claimed that religious meetings were also subject to this rule. On the justifiable objection of the Catholic Church this rule was relaxed with regard to religious meetings. In 1907 the necessity of previous notice for meetings was abolished, except for open-air meetings.

III

Freedom of Association

An "Association" is a permanent group of individuals who combine their efforts towards a non-commercial aim. Under despotic régimes associations of this kind were mistrusted, and up to 1875 the French Penal Code forbade the formation of a society of more than twenty members without special permission. The Third Republic began to show leniency towards this type of association, and finally, by the law of 1901, the following principles were proclaimed:

1. An association, however large, may be formed without formality, provided that its objects are not
   (*a*) Illicit.
   (*b*) Contrary to public morals.

(*c*) Opposed to the Republican form of Government.
(*d*) Aimed against the integrity of national territory.

2. Associations thus established, though considered legal, are not invested with a "legal personality"; they cannot possess or acquire property, or plead in a Court.

(*a*) By a simple declaration an Association acquires the right of "petite personalité". Such "declared associations" can plead in Court, acquire under title-deed ("à titre onéreux"), and possess, apart from administrative grounds ("en dehors des subventions administratives"), shares up to 500 francs and effects strictly necessary for the association.

Hence this type of Association cannot receive bequests.

(*b*) Associations of public utility enjoy "pleine personnalité". They can receive bequests, but not of such a type from which interest might accrue.

The law of 1901 excluded religious congregations from the freedom of association, demanding the authorization of Parliament for their formation. Sixty congregations applied in vain for an authorization.

IV

Freedom of Teaching

Freedom in this respect is complete, except for religious congregations.

The law of 1833 gave freedom of Primary Education.

The law of 1850 gave freedom of Secondary Education.

The law of 1875 gave freedom of Superior Education.

By the laws of 1901 and 1904 all convents and boarding-schools run by nuns and monks were closed down.

V

Freedom of Religion

This means the right of practising, without interference, the ceremonies of one's religious beliefs.

In 1801 a Pact known as "Concordat" was signed between Bonaparte and the Pope. It established the collaboration of Church and State. Hence religious ministers have become State officials.

The law of 1905 substituted separation for collaboration of Church and State. This meant:

A. Freedom of Religion.

B. The organization of this new freedom; i.e. religious associations had to be formed to take over the possessions of the suppressed ecclesiastical institutions.

The natural objection of the Catholic Church to form such associations unfortunately resulted in a total loss of their property. Later, the Law of 1907 tried to introduce legal sanction for religious services by granting the right to hold such services on application by religious associations or ministers of religion. The Pope quite rightly forbade the acceptance of this offer. This led to the establishment of a *de facto* régime, giving rise to some judicial difficulties.

1. Religion is not recognized, but it is not ignored.
   (*a*) The State does not ignore religion, because it imposes certain restrictions on it—e.g. religious ministers are not allowed to give religious instruction during school hours.
   (*b*) The State does not ignore religion as it sometimes favours it, e.g. the judicial and administrative authorities recognize the "fact" of the Church. Its congregations enjoy judicial capacity, and its ministers also have this right, but only when they are members of the hierarchy recognized by the Church authorities.

   N.B.—Army chaplains receive an officer's pay.

2. Religion is free.
   (*a*) Religious buildings are still exclusively used for religious ceremonies, but these buildings none the less belong to the local "commune", which alone controls their upkeep. The local "curé" must pay rent to the "commune" for his lodging in the vicarage.
   (*b*) Religious ceremonies are free. The State Council rigorously protects the freedom of Religion; it annuls municipal restrictions on freedom of religious ceremonies, and opposes the abuse, misuse, and excess of power ("l'excès, l'abus, le détournement de pouvoir") of local authorities in that respect.
   (*c*) Religious organization is free. The Church is freer than under the "Concordat". It is now free from State influence.

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